

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

**IN RE: DIGITEK PRODUCTS LIABILITY LITIGATION**

MDL NO. 1968

THIS DOCUMENT RELATES TO ALL CASES

**PRETRIAL ORDER #29  
(Severance Procedures)**

Consistent with PTO #7, it is **ORDERED** as follows:

1. Except for the first-named plaintiff, every other plaintiff (and his or her derivative claimants, if any) in each of the following actions is to be severed:
  - *Byasse v. Actavis Totowa, LLC*, 2-09-cv-00014;
  - *Sanders v. Actavis Group*, 2-09-cv-00189; and
  - *Criss v. Actavis Totowa, LLC*, 2-09-cv-00543.
2. Within thirty (30) days after the entry of this order, each severed plaintiff and any derivative plaintiffs claiming under him or her must electronically file a “Severed and Amended Complaint” in 2:09-cv-99999 by choosing “Complaint with Civil Cover Sheet Attached” to continue the prosecution of the claims they allege;
3. The Severed and Amended Complaint shall note the original civil action number and original filing date;

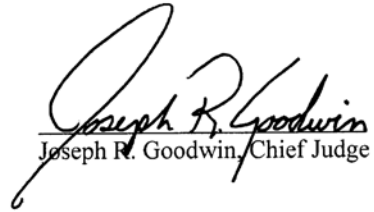
4. Filing must be accompanied by the appropriate filing fee. Failure to remit the filing fee will result in the dismissal without prejudice of the affected Severed and Amended Complaint;
5. An Amended Complaint may be filed for the remaining plaintiff that was not severed. Unless leave of court is first obtained, the only authorized changes include removing the severed plaintiffs and any claims solely relating to severed plaintiffs.
6. The Severed and Amended Complaints must be served in accordance with Rule 5 or this court's PTO #16;
7. The Clerk will assign a separate civil action number to each Severed and Amended Complaint. The civil actions will be promptly and fully opened in the CM/ECF system and a Notice of Electronic Filing ("NEF") will be generated when that occurs; Parties are not to file documents in the Severed and Amended actions until the NEF is received;
8. A Severed and Amended Complaint may plead only those claims, and name those defendants, appearing in the original multi-plaintiff action or a subset of them;
9. If you wish to amend you must get prior leave of court before filing a Severed and Amended Complaint;
10. In the alternative, you may file your Severed and Amended Complaint including only the original claims and original defendants and then you may seek leave of court to file an additional Amended Complaint.
11. Any plaintiff wishing to dismiss claims rather than filing a Severed and Amended complaint may do so in accordance with Rule 41 by filing proper notice in the member case.

12. Any defendant included in the original action but not included in the Severed and Amended Complaint will be dismissed without prejudice by court order upon proper motion to the court;
13. Any defendant may move for dismissal of a plaintiff's claims pursuant to Rule 41 as the result of any severed plaintiff's failure to adhere to the timing and procedures set forth for filing the Severed and Amended Complaint;
14. For the purposes of the applicable limitations period, any Severed and Amended Complaint will be deemed to have been filed on the filing date of the original complaint from which the plaintiff was severed;
15. Multi-plaintiff actions docketed in this MDL shall be severed by court order unless a remand motion is pending in a transferred action at the time it is docketed in this MDL; and
16. Any other rights of Plaintiffs or Defendants included in PTO #7 are still applicable.

The court **DIRECTS** the Clerk to file a copy of this order in 2:08-md-1968 which shall apply to each member Digitek-related case previously transferred to, removed to, or filed in this district, which includes counsel in all members cases up to and including civil action number 2-09-cv-765. In cases subsequently filed in this district, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action at the time of filing of the complaint. In cases subsequently removed or transferred to this court, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action upon removal or transfer. It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the court. The orders may be accessed through the CM/ECF system or the

court's website at [www.wvsc.uscourts.gov](http://www.wvsc.uscourts.gov).

ENTER: July 2, 2009



Joseph R. Goodwin, Chief Judge